

PUBLIC DISCLOSURE VERSION

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2003-327-C**

IN RE:)
)
Continued Availability of High)
Capacity Loops at Certain Locations and)
Unbundled High Capacity Transport on)
Certain Routes Pursuant to the Federal)
Communication Commissions= Triennial)
Review Order)
_____)

**DIRECT TESTIMONY OF JAKE E. JENNINGS
ON BEHALF OF NEWSOUTH COMMUNICATIONS CORP.**

DOCKET NO. 2003-327-C

March 12, 2004

I. Introduction and Overview

Q. Please state your name, title, and business address for the record.

A. My name is Jake E. Jennings. I am currently Senior Vice President of Regulatory Affairs and Carrier Relations of NewSouth Communications Corp. (“NewSouth”) and have been employed by the company since October of 2000. In my capacity as Senior Vice President I have had an integral role in preparing, developing, and implementing NewSouth’s business plan, negotiating and implementing interconnection agreements with incumbents, and managing intercarrier relations. NewSouth is a Delaware corporation with its principal place of business at Two North Main Street, Greenville, South Carolina, 29601.

Q. Please describe your professional experience and background.

A. Prior to joining NewSouth, I was employed by the Federal Communications Commission from March, 1997 to September, 2000, as Deputy Chief, Policy Division, Common Carrier Bureau. In that capacity I actively managed over 25 attorneys and economists in drafting orders, recommendations and legal briefs on telecommunications policy matters. I also provided briefings to the Chairman and other Commissioners on issues and recommendations affecting the telecommunications industry, including mergers and local competition issues. Moreover, I managed several 271 applications by Bell Operating Companies to provide in-region long distance service; managed UNE Remand – FCC Order determining which network elements incumbent local exchange carriers must provide on an unbundled basis; and reviewed and analyzed various mergers, including

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1 negotiating conditions for Bell Atlantic/Nynex, Bell Atlantic/GTE, and SBC/Ameritech
2 merger.

3
4 From November, 1994 until February, 1997 I was employed by Illinois Commerce
5 Commission, as Senior Policy Analyst in the Policy and Planning Division,
6 Telecommunications Department. While at the Illinois Commission I testified in over 25
7 proceedings as Staff witness addressing pricing, competitive classification,
8 interconnection agreements, unbundling and interconnection issues. I also provided
9 assistance to Department of Justice in reviewing Ameritech Illinois waiver request of the
10 Modified Final Judgment.

11
12 Prior to joining the Illinois Commerce Commission, I was employed by Oklahoma
13 Corporation Commission from June, 1992 until October, 1994 as Senior Tariff and Cost
14 Analyst in the Public Utility Division. In that capacity I provided analysis and testimony
15 on competitive telecommunications issues, including 10XXX dial around competition
16 and energy policy issues.

17
18 I have a graduate degree in Economics from the University of Central Oklahoma and
19 bachelor degree in Economics, Mathematics, and Statistics from the University of Central
20 Oklahoma.

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1 Q. On whose behalf are you testifying in this proceeding?

2 A. I am testifying on behalf of NewSouth Communications Corp. NewSouth is a member of
3 CompSouth.
4

5 Q. What is the purpose of your testimony?

6 A. The purpose of my testimony is to provide: (1) an overview of CompSouth and its
7 member companies; (2) an overview of NewSouth and its entry into the local market as a
8 facilities-based CLEC and the benefits of competition that NewSouth, like other
9 facilities-based CLECs, provides to South Carolina customers; (3) a brief overview of the
10 FCC's Triennial Review Order (TRO) and to highlight the importance of continued
11 access to unbundled loops and transport to these companies; and finally, (4) an
12 explanation, from a business perspective, as to why the Commission must provide for a
13 systematic transition program that will allow carriers to transition effectively from the
14 ILECs' unbundled network elements to alternative arrangements if, and when a network
15 element is delisted as a UNE under Section 251(c)(3) of the Telecommunications Act.
16

17 **II. Overview of CompSouth**

18 Q. Please describe CompSouth.

19 A. CompSouth is a non-profit association committed to promoting customer choice in the
20 provision of telecommunications services in the Southeast. CompSouth's members
21 include regional and national competitive local exchange carriers ("CLECs"), all of
22 whom operate in South Carolina, as well as national industry associations. CompSouth's

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1 members include: ITC^DeltaCom; MCI Business Telecom Inc.; NewSouth
2 Communications Corp.; AT&T; Nuvox Communications, Inc.; Access Integrated
3 Networks, Inc.; Birch Telecom; Talk America; Cinergy Communications Company; Z-
4 Tel Communications; Network Telephone Corp.; Momentum Business Solutions; Covad;
5 KMC Telecom; IDS Telcom, LLC; and Xspedius Corp. CompSouth's National
6 association members include the Association of Communication Enterprises
7 ("ASCENT"), the Competitive Telecommunications Association ("CompTel") and the
8 Promoting Active Competition Everywhere ("PACE") Coalition.

9
10 The majority of CompSouth's member companies are small carriers. They generally
11 either are privately held or have a market capitalization of less than one billion dollars.
12 For purposes of comparison, BellSouth's operating revenue during the third quarter was
13 \$6.9 billion and EBITDA was \$3 billion.

14
15 Q. What services do CompSouth members offer?

16 A. CompSouth members provide a wide variety of telecommunications services, including
17 local, long distance, and high speed data services. Collectively, CompSouth members
18 provide services to business customers throughout South Carolina, including areas served
19 by BellSouth, Sprint, and Verizon.

20
21 CompSouth's members have different business plans and customer bases. Some
22 CompSouth members focus on Tier II and Tier III markets, providing service to the

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1 enterprise customers by purchasing high capacity loops from the ILEC as unbundled
2 network elements (UNEs). In the vast majority of instances, these CompSouth members
3 rely on UNE loops and dedicated transport at DS1 capacity and above to serve end users.
4 Certain CompSouth members employ these two UNEs in a combination commonly
5 referred to as an "enhanced extended link" or "EEL." CompSouth members typically use
6 EELs to access customers in central offices where they are not collocated. Using EELs,
7 CompSouth member carriers can offer a variety of services and can expand their foot
8 print to reach to a broader group of end user customers.

9
10 Q. What services do CompSouth's members provide to the enterprise market in particular?

11 A. For the most part CompSouth members provide an integrated T1 service to enterprise
12 customers. An integrated T1 uses a DS1 level technology to deliver a bundle of services
13 that typically includes local voice, Internet, and long distance services. Through an
14 integrated T1 product, carriers can deliver broadband down market to customers with as
15 few as eight line equivalents. Other services include traditional voice as well as data
16 services, including broadband internet access and virtual private networks.

17
18 Q. How do CompSouth members typically provide services to their customers today?

19 A. CompSouth's members generally use a variety of entry strategies to provide services to
20 their customers throughout the Southeast. Approximately four of the CompSouth
21 members provide facilities-based local services. Generally, these CompSouth members
22 have constructed one or more fiber rings of varying scope and will serve customers using

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1 those rings when possible. These fiber rings typically link customer sites to a carrier's
2 switching or hub site. Collocation at the ILEC wire center is used in this network
3 architecture to access unbundled loop facilities. CLECs typically do not configure the
4 ring to provide transport between wire centers. As such, there should be few CLEC
5 transport networks that run between ILEC central offices.

6
7 Q. How do CompSouth's members use loops and dedicated transport provided as UNEs?

8 A. Loops are the transmission facilities between a central office and the customer's
9 premises. Loops are considered to be the "last mile" of a carrier's network that enables
10 the end-user customer to receive, for example, a telephone call or a facsimile, as well as
11 to originate similar communications." Triennial Review Order ¶ 203. CompSouth
12 members typically purchase unbundled DS1, DS3, and dark fiber loops from the ILECs,
13 connect those elements to their own facilities to provide telecommunications services to
14 the customer. CompSouth members use dedicated transport to perform a critical call
15 aggregation function to maximize economies of scale. These carriers use DS1, DS3, and
16 dark fiber dedicated transport to carry traffic from their end users' loops generally to
17 ILEC central offices through other central offices to a point of aggregation.

18
19 Q. With regard to loops and transport, which entry methods would be affected by the
20 outcome of this proceeding?

21 A. Facilities-based carriers would be the most affected by this proceeding. In this
22 proceeding, the Commission is evaluating whether the triggers have been satisfied on a

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1 particular loop or route at a certain capacity level, such that impairment might not exist
2 and ILECs would not be required to offer unbundled loops and transport on that route or
3 at that customer location. Even if the trigger has been satisfied, the Commission has the
4 authority to conclude that impairment still exists at that particular route or location such
5 that ILECs must continue to provide unbundled loops and transport on that route or at a
6 specific location. Mr. Gary Ball will discuss this issue in greater detail in his testimony.
7 Facilities-based carriers use loops, transport, and EELs to reach their customers. Indeed,
8 the availability of UNE loops and transport is critical to the ability of CompSouth's
9 facilities-based members to use their own network facilities efficiently and to reach those
10 areas where it is not feasible for them to deploy their own facilities in competition with
11 the ILECs.

12
13 **III. NewSouth's Investment in Facilities Demonstrates that Unbundling Furthers the**
14 **Goals of the Act.**

15 Q. Please provide a brief overview of NewSouth.

16 A. NewSouth is an Integrated Voice and Data Service provider headquartered in Greenville,
17 South Carolina. NewSouth has deployed 13 voice switches; 14 data switches and 80
18 collocations throughout the Southeast. In particular, NewSouth has 2 voice switch and
19 10 collocation arrangements in the state of South Carolina. NewSouth has over
20 **REDACTED** customers in South Carolina with over **REDACTED** access lines.
21 NewSouth has invested over **REDACTED** of capital within the state of South Carolina.

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1 Although NewSouth offers service in markets such as Columbia and Greenville,
2 NewSouth primarily targets small and mid-sized towns and cities. NewSouth offers
3 competitive alternatives in cities such as Charleston.

4
5 NewSouth is a privately held company that has been in existence for less than six years.

6 The vast majority of NewSouth's financing thus far has come from private equity
7 sources. NewSouth has incurred very little debt. To date, NewSouth has invested more
8 than half a billion dollars to enter the local telecommunications market. As noted above,
9 approximately \$176 million of that total investment has been in the capital expenditures –
10 switches, collocation, routers, CPE, back office systems. The remaining investment has
11 been used to fund operations, such as salaries, marketing expenses, and leasing of
12 facilities such as DS1 loops and interoffice transport.

13
14 As with any new entrant in an industry characterized by high initial fixed costs,
15 NewSouth is not yet cash flow positive – that is, NewSouth is still spending more money
16 to run its business than it is earning from selling its services. The burden of high fixed
17 entry costs in this industry – and the need to obtain access to UNEs to defray such costs–
18 cannot be overstated. NewSouth's initial capital expenditure to deploy its network, as
19 noted above, has been approximately \$176 million to date. Having made this investment,
20 NewSouth anticipates that its future capital expenditures will be greatly reduced, totaling
21 less over the next nine years than the total spent in the NewSouth's initial three years.

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1 NewSouth anticipates that future capital expenditures will be incurred only as necessary
2 to accommodate incremental customer growth – adding switching modules for example.
3

4 Q. Please briefly explain NewSouth’s entry into the local exchange market in South
5 Carolina.

6 A. NewSouth’s facilities strategy is to invest in the equipment that provides the intelligence
7 in the network, e.g., circuit and packet switches. NewSouth strategy does not involve
8 trenching in order to lay fiber. Instead, NewSouth relies on the transmission facilities of
9 other carriers, incumbent LECs in the “last mile,” incumbent LECs (or alternative
10 carriers, if available) for backhaul to NewSouth’s switches, and alternative carriers for
11 intercity transport that links NewSouth’s switches. By leasing, rather than constructing
12 its own transmission facilities, NewSouth avoids certain sunk costs. The cost of
13 constructing fiber dedicated to a particular customer is irretrievably lost if NewSouth
14 loses that customer. This Commission has long recognized that such sunk costs
15 constitute a barrier to entry. *See, e.g., Implementation of the Local Competition*
16 *Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report*
17 *and Order, FCC 96-325, ¶¶ 10-15 (rel. Aug. 8, 1996) (“Local Competition Order”).*
18 Currently, this intelligence resides in the core of NewSouth’s network. At the edges of
19 the network, NewSouth has invested in equipment that it collocates in incumbent LEC
20 central offices and on the customer premises. This equipment essentially performs
21 translation functions that enable NewSouth to transport the customer’s traffic over the
22 leased DS1 loops and transport facilities to NewSouth’s switch platform. The investment

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1 that NewSouth has made to purchase circuit and packet switches, network control and
2 customer care systems, and customer premises equipment and collocated equipment is
3 substantial. To date, NewSouth's capital investment in its network exceeds \$176 million.
4 NewSouth thus far has deployed eleven Lucent 5ESS® AnyMedia™ circuit switches and
5 two Siemens EWSD circuit switches at a total cost of nearly \$75 million. NewSouth has
6 also deployed fourteen Cisco BPXTM8680 multi-service wide-area packet switches in its
7 network backbone at a cost of over \$4 million. These packet switches are NewSouth's
8 on-ramps to the Internet backbone, through which it provides Internet services and other
9 packet-based data services to its customers. Additionally, NewSouth has invested nearly
10 \$27 million to collocate equipment in (currently) 80 incumbent LEC central offices.
11 NewSouth has collocated primarily in BellSouth central offices but also has collocated in
12 Verizon (former GTE) central offices and Sprint (ILEC) central offices as well. It has
13 invested more than \$70 million in customer premises equipment, back office customer
14 care systems and a network control center.

15
16 Q. Please discuss the benefits that NewSouth and other CompSouth members have provided
17 in South Carolina.

18 A. Facilities investment that has brought substantial benefits to consumers. NewSouth is
19 able to attract customers because, through the facilities it has deployed, it can offer
20 customers a value proposition that exceeds what they currently receive from the
21 incumbent. This value proposition involves not only better prices, but also more and
22 varied services, including advanced services. NewSouth offers basic local and long

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1 distance services at prices fifteen to twenty percent below the incumbent's prices.

2 NewSouth offers businesses, even smaller businesses, the ability to obtain sophisticated
3 advanced services, such as high-speed Internet access, web hosting, and private
4 networking services ranging from point-to-point dedicated transmission to high-speed,
5 secure, virtual private networks for data transmission such as LAN-to-LAN and WAN-to-
6 WAN connections and teleconferencing capabilities.

7
8 In fact, approximately ninety percent (90%) of NewSouth's retail customers served over
9 DS1 circuits did not have access to high-speed data services from the incumbent LEC.
10 Instead, these customers were previously served by the incumbent LEC via analog
11 service. Thus, NewSouth's ability to compete with the incumbent LEC using unbundled
12 DS1 loops has had the added benefit of increasing the availability of advanced services –
13 one of the key goals of the 1996 Act. These benefits are not limited to Tier One markets,
14 but also include Tier III – IV markets.

15
16 Q. Please explain how NewSouth provides facilities based service.

17 A. NewSouth's network consists of four main parts: (i) digital circuit switches and packet
18 switches; (ii) lit intercity fiber leased from third parties to connect these switches with
19 each other; NewSouth purchases intercity transport from third party suppliers, not an
20 incumbent LEC, to connect its thirteen voice and fourteen data switches. (iii) equipment
21 collocated in incumbent LEC central offices and on customer premises; and (iv) a
22 network control center and back office customer care and billing platforms.

1
2 To connect NewSouth's switch platform to its customers, NewSouth must rely on
3 incumbent LEC high capacity (DS1) local loops and EELs. NewSouth uses unbundled
4 DS1 loops to provide services primarily to small- and medium-sized businesses that
5 utilize a PBX or key system on their premises. Typically the customer will already have
6 PBX or key system on the premises. NewSouth will also obtain such systems for a
7 customer as needed. To deliver its services to the customer, NewSouth installs
8 equipment on the customer premises that acts as an interface between the customer's
9 PBX or key system, or router, and the DS1 loop facility that NewSouth leases from the
10 incumbent LEC. This equipment typically consists of Adtran Channel Bank Unit
11 ("CBU") or Channel Service Unit ("CSU"). A CBU is a multiplexing device that sits
12 between a DS1 loop and PBX or Key System if the PBX will not take a digital signal.
13 The CBU places many analog voice conversations or analog data applications (e.g., fax
14 or modem) onto one high-speed link like a DS1 and controls those conversations or
15 applications.

16
17 NewSouth utilizes EELs to provide service to its customers in the same manner as with
18 stand-alone DS1 loops. NewSouth places equipment at the customer premises to
19 interface with the customer's PBX or key system and a leased DS1 loop. However,
20 instead of terminating directly at a NewSouth collocation arrangement, the DS1 loop
21 "terminates" at an intermediate incumbent LEC central office where it is cross-connected
22 to incumbent interoffice transport, which in turn terminates at a NewSouth collocation

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1 arrangement. In fact, NewSouth views an EEL as an unbundled loop with a distance

2 sensitive pricing component – with the same functionality as an unbundled loop.

3 NewSouth typically utilizes a DS1 level signal for both the loop and transport component
4 of the EEL.

5
6 **IV. FCC Triennial Review Order - National Finding of Impairment for High Capacity**
7 **Loops and Transport**

8 Q. What did the FCC conclude in the Triennial Review Order with regard to a CLEC's
9 ability to obtain loops and transport?

10 A. The Triennial Review Order affirms, and as noted even the ILECs agreed that the loop
11 network element must be unbundled pursuant to sections 251(c)(3) and 251(d)(2) of the
12 Act. Triennial Review Order ¶ 203. Consistent with this view, in the Triennial Review
13 Order, the FCC made a national finding of impairment with regard to loops and transport.
14 In other words, the FCC concluded that carriers were impaired without access to
15 unbundled DS1, DS3, and dark fiber loops at a customer-location-specific basis, and
16 without access to unbundled DS1, DS3, and dark fiber transport facilities on a route-by-
17 route basis. See Triennial Review Order ¶ 360. The FCC, however, did delegate to the
18 state Commissions the responsibility to determine whether certain “triggers” have been
19 met. The purpose of the triggers is to determine those limited situations in which
20 deployment might have occurred at certain customer locations or on certain routes, such
21 that there is no impairment at those particular locations or on those routes. If the triggers

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1 are applied properly, a finding of no impairment likely will be made only on a small
2 number of customer locations and routes.

3
4 Q. What are the triggers?

5 A. There are two triggers: a self-provisioning trigger and a wholesale facilities trigger. The
6 FCC, however, determined not to apply the self-provisioning trigger to DS1 loops or
7 transport, because carriers cannot economically self-provision such loops or transport.
8 See Triennial Review Order ¶¶ 327, 409. For loops, the triggers apply to each customer
9 location. For transport, the triggers apply for each “A to Z” route between ILEC central
10 offices. Mr. Gary Ball will discuss the triggers in detail.

11
12 Q. How are the triggers applied?

13 A. Application of the triggers is not a counting exercise. An ILEC simply cannot claim that
14 there is no impairment on a particular loop or route because it can identify, for example,
15 two carriers at a particular location (for DS1 and DS3 loops) or for a certain route that
16 might offer wholesale service. The triggers require a more rigorous analysis to determine
17 if actual wholesale alternatives exist on the route.

18
19 The FCC repeatedly has stated that “actual competitive deployment is the best indicator
20 that requesting carriers are not impaired.” Triennial Review Order ¶ 335. Therefore, the
21 FCC designed the triggers to be co-extensive with the impairment analysis. In other
22 words, if the triggers are applied properly, they will not be satisfied unless a competitive

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1 marketplace actually exists on a particular route or at a specific customer location, in
2 which case CLECs would not face any economic or operational impediments with respect
3 to the particular customer location or transport route. The triggers are designed to ensure
4 that loops and transport will continue to be unbundled unless there is clear, factual
5 evidence that the myriad operational and economic barriers facing competitors have been
6 overcome and that true competition exists.

7
8 Q. What is the appropriate role of state commissions in applying the triggers?

9 A. The FCC has delegated to state commissions "the authority to make findings of fact
10 within the scope of these triggers to identify on a more granular scale where" CLECs are
11 not impaired without access to ILEC loops and transport. See Triennial Review Order ¶
12 360. In making these factual findings, states are "to gather and assess the necessary
13 information." Id. ¶ 188. The states' roll is not merely to perform a counting exercise but
14 to "assess" whether competition exists in the marketplace such that the FCC's national
15 finding of impairment has been overcome. In order to conduct the trigger analysis
16 properly, states must define certain key terms within the triggers. States then must apply
17 those triggers in an appropriate and consistent manner.

18
19 In determining whether impairment no longer exists on a particular loop or route, a state
20 commission does not need to go beyond the triggers or to rely on state laws as a basis for
21 UNE availability. The state commission must insist that "relevant evidence
22 [demonstrates] that the customer location [or route] satisfies one of the triggers."

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1 (emphasis added). If it does so, very few customer locations or transport routes will meet
2 the impairment trigger and in those instances CLECs will be able, as a practical,
3 economic, and operational matter, to use alternatives to the ILEC facilities without
4 impairment. The Commission's granular review will ensure that CLECs continue to have
5 access to loops and transport unless they truly are not impaired at a particular location or
6 on a certain route.

7
8 Q. What would be the impact of reduced availability to unbundled loops and transport to
9 CompSouth's members?

10 A. As I stated above, the enterprise market is composed predominantly of business
11 customers, which demand unique and sophisticated services tailored to their needs. In
12 many instances, competitive carriers, including CompSouth's members, have been at the
13 forefront of providing sophisticated services to these customers. In some instances, it
14 was not until a competing carrier offered a service to customers (such as the integrated
15 T1 service) that BellSouth even began to offer a similar service.

16
17 If CompSouth members continue to have access to unbundled loops and transport, then
18 they can continue to roll out their services and expand their customer bases. These
19 benefits to consumers, however, may continue only to the extent that UNEs to customer
20 locations and on routes are not eliminated absent a finding that CLECs truly are not
21 impaired at that location or along a particular route. If the triggers are applied in a
22 manner that customer locations or transport routes are eliminated in the absence of viable

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1 self-provisioning or working wholesale alternatives, then consumers will see a decrease
2 in available services and providers competing for their business.

3
4 Carriers would not be able to reach the breadth of customers that they currently serve,
5 and the carriers' customer bases likely would be concentrated in fewer locations. For
6 example, as the FCC acknowledged in addressing impairment for DS1 loops, a CLEC
7 that "plans to self-deploy its own facilities must target customer locations where there is
8 sufficient demand from a potential customer base, usually a multi-tenant premises
9 location, to generate a revenue stream that could recover the sunk construction costs of
10 the underlying transmission facility, including laying the fiber and attaching the requisite
11 optronics to light the fiber." Triennial Review Order ¶ 303. This would result in a retreat
12 of the facilities-based competition present today.

13
14 **V. Transition Issues**

15 Q. What would happen if the Commission delists unbundled loops and transport?

16 A. NewSouth's, along with CompSouth member's, business plan and budget projections are
17 based on the current cost of providing services. NewSouth prices its retail services in
18 accordance with its planned cost of providing services. These business plans typically
19 include a two year projection and assumed that NewSouth would be paying for these
20 circuits at the UNE rates to which it was entitled for the specified period, not the inflated
21 special access rates. Therefore, if unbundled loops and transport are delisted, then
22 NewSouth's direct costs are increased. Because NewSouth provides service under term

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1 contracts with its customers, then it would not be able to flow-through the cost increase to
2 its customers. Therefore, it is critical that the Commission grandfather any UNEs
3 delisted that are currently being used to serve customers. This approach is consistent
4 with the FCC's transition for switching and line-sharing.
5

6 Q. Are there other transition issues that the Commission should address?

7 A. Yes, there are other transition issues that the Commission should address, but not in this
8 proceeding. Rather, I recommend that the Commission initiate a follow-up proceeding to
9 address transition issues, including, but not limited to: ability to physically migrate from
10 UNEs to other wholesale facilities where available, ability to order and maintain UNE
11 high capacity loops to a third party's wholesale transport facilities, ability to order co-
12 carrier cross connects to access alternative transport providers, among other operational
13 matters.
14

15 Q. Does this conclude your testimony?

16 A. Yes.
17